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Chairman: Mr. Yáñez-Barnuevo ..... (Spain)

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The meeting was called to order at noon.

Agenda item 83: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/C.6/60/L.11)

1. **Mr. Wenaweser** (Chairman of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel and of the Working Group), introducing draft resolution A/C.6/60/L.11, said that he was pleased to report that all outstanding issues had been resolved and agreement had been reached on the text of an optional protocol to the Convention on the Safety of United Nations and Associated Personnel, which was annexed to the draft resolution. The text had been issued in all languages, although it appeared that there were some editorial mistakes in the French version.

2. The work on drafting an optional protocol had been motivated by deep concern over the continuing pattern of attacks against United Nations and associated personnel, whose legal protection was governed by the Convention, and by the need for an effective regime to bring the perpetrators of such attacks to justice, as reflected particularly in the first, second and fourth preambular paragraphs of the draft optional protocol. The aim was therefore to expand the scope of legal protection for such personnel.

3. The relationship between the draft optional protocol and the Convention was spelled out in draft article I, which stipulated that the protocol supplemented the Convention and that the two should be read and interpreted together as a single document. Accordingly, under the terms of draft article II, which was key to the extension of the scope of legal protection, the parties to the protocol should, in addition to United Nations operations as defined in article 1 (c) of the Convention, apply the Convention in respect of all other United Nations operations established by a competent organ of the United Nations and conducted under United Nations authority and control for the purposes of delivering humanitarian, political or development assistance in peacebuilding or delivering emergency humanitarian assistance. Article II was to be understood in the light of the third preambular paragraph of the optional protocol, which recognized that operations conducted for such purposes, which entailed particular risks for United Nations and associated personnel, required the extension of the scope of legal protection under the Convention to such personnel. However, article II, paragraph 1, of the optional protocol did not apply to permanent United Nations offices and specialized agencies established under an agreement with the United Nations.

4. The term "peacebuilding" had been the subject of extensive discussion. Although it had been critical to the achievement of a compromise on the text, attempts to define it had finally been abandoned. The understanding was that the arrangements envisaged in draft article II, paragraph 1, to conduct a given operation, together with relevant domestic legislation, would provide guidance on the intended scope of the term in relation to that operation. The scope of legal protection in the case of an operation for the delivery of humanitarian assistance in the event of a natural disaster had also been discussed. Under draft article II, paragraph 3, a State might make a declaration to the Secretary-General that it would not apply the provisions of the protocol with respect to an operation to deliver emergency humanitarian assistance for the sole purpose of responding to a natural disaster. Such an opt-out declaration should be made prior to the deployment of the operation.

5. Draft article III, while affirming the duty of a State party to the protocol to observe article 8 of the Convention, also asserted the State party's right to take action in the exercise of its national jurisdiction over any United Nations or associated personnel violating the laws and regulations of that State. It was clearly understood that any such action would not be in violation of any other international law obligation of the State party.

6. The draft resolution itself had been elaborated with a view to addressing some of the concerns raised during the negotiations on the draft optional protocol. It therefore contained new elements, while at the same time reflecting other factual and relevant information.

7. He drew attention to the provision, in the fourth preambular paragraph, reaffirming the importance of maintaining the integrity of international humanitarian law in the context of the Convention, which had been ratified or acceded to by 79 States to date. States were encouraged to enact national legislation, as necessary, that would enable the Convention and the draft optional protocol to be implemented. Such legislation

would be particularly necessary in the context of the term "peacebuilding". The draft resolution also contained a reference to paragraph 167 of the 2005 World Summit Outcome (A/RES/60/1), which stressed the need to conclude the negotiations on the optional protocol during the current session. As in previous years, the draft resolution reaffirmed the obligation of all humanitarian personnel and United Nations and associated personnel to respect the national laws of the countries in which they operated, in accordance with international law and the Charter of the United Nations. It also referred to the increasing dangers faced by such personnel in the field and underlined the need to promote the universality of the Convention.

8. He recommended that the draft resolution should be adopted without a vote. The flexibility and spirit of compromise shown by delegations, during what had been a difficult and lengthy process, had enabled the Committee to reach the stage at which it could take action on the text of a draft optional protocol that would enhance the legal protection of United Nations personnel engaged in duties on behalf of the international community, often under very difficult and dangerous circumstances.

9. **Mr. Elji** (Syrian Arab Republic), speaking in explanation of vote before the voting, said that his country fully respected the role played by United Nations personnel in performing their functions and that it would continue to make every possible effort to ensure the security and safety of such personnel in its territory. As he understood it, the peacebuilding mentioned in the draft optional protocol would be exclusively confined to post-conflict situations, thus excluding conflict and pre-conflict situations. The scope of the draft optional protocol consequently extended to the post-conflict peacebuilding defined in paragraph 97 of the 2005 World Summit Outcome. The draft optional protocol aimed to extend the scope of the Convention on the Safety of United Nations and Associated Personnel of 1994 so that it included United Nations peacebuilding operations and operations conducted for the purpose of delivering emergency humanitarian assistance which entailed particular risks. The risk element was therefore a prerequisite for application of the draft optional protocol. In order to make that point clear, the Arabic text should be brought into line with the English text through deletion of the first two commas which appeared in the third preambular paragraph of the former.

10. He affirmed the right of the State, pursuant to article 8 of the Convention, to take action in the exercise of its national jurisdiction over any United Nations or associated personnel who violated its laws and regulations. He also stressed that the Convention and the draft optional protocol aimed to protect the safety of United Nations and associated personnel and that immunities and privileges were accorded only to those who were covered under the Convention on the Privileges and Immunities of the United Nations.

11. **The Chairman** urged all linguistic groups to decide among themselves on specific wording that should be adopted and submit it to the Secretariat.

12. **Ms. Taj El Dine** (Bolivarian Republic of Venezuela) said that, although her delegation would join the consensus in adopting the draft resolution in the interest of extending the scope of legal protection to United Nations and associated personnel in situations of exceptional risk, it wished to make an interpretative declaration concerning three aspects of the draft resolution and the annexed draft optional protocol. First, it was her delegation's understanding that both the Convention on the Safety of United Nations and Associated Personnel and the draft optional protocol would not apply in situations governed by international humanitarian law. Secondly, the term "peacebuilding operations" lacked legal precision, therefore giving rise to conceptual ambiguities that should be avoided. Such operations appeared to constitute a new mechanism for intervention by States. Indeed, some States sought to twist the meaning of the term still further with their claim that such operations allowed broader scope for action as in pre-conflict and conflict situations. Her delegation therefore disassociated itself from the very concept of peacebuilding, as the term was used in the third preambular paragraph and article II, paragraph 1 (a), of the draft optional protocol. Moreover, her delegation interpreted the draft article as applying only to conflict situations involving exceptional risk.

13. Thirdly, natural disasters, referred to in draft article II, paragraph 3, did not necessarily generate situations involving risk for United Nations and associated personnel. It was, therefore, her delegation's understanding that the draft optional protocol would apply only to natural disasters that actually produced a

situation of exceptional risk. Moreover, the reference in that paragraph to a "host State" should be implicitly understood to refer to a host State party to the draft optional protocol, since only such States parties could assume or fail to assume obligations under the protocol.

14. **Mr. Guan** Jian (China) said that his delegation supported the draft resolution and the draft optional protocol. However, the Chinese version contained some inappropriate translations and his delegation would, as the Chairman had suggested, shortly submit proposed corrections to the Secretariat.

15. **Mr. Abdelsalam** (Sudan) said that his delegation was not convinced that the Committee had established the best possible text for the draft optional protocol. Negotiations over the past few years had aimed to fill the gaps in the Convention on the Safety of United Nations and Associated Personnel, as well as taking account of other developments on the ground. The aim of consensus, as reflected in the 2005 World Summit Outcome, was commendable, but consensus was not an end in itself but rather a vehicle for harmony and cooperation in drafting a text. As it stood, the optional protocol showed signs of haste in the drafting: the text was the very one on which the Committee had earlier disagreed. Some provisions still gave cause for doubt and argument. His delegation would, however, support the consensus on the draft resolution out of respect for the Committee's usual practice.

16. **Mr. Sandoval** (Colombia) said that, while his delegation supported the consensus on the draft resolution, it would have preferred to include in the text a legal definition of the term "peacebuilding", since the latter was a novel concept in international law. In the absence of such a definition, his delegation took it that the notion was restricted to post-conflict situations, given its current usage and the wording of paragraph 97 of the 2005 World Summit Outcome. His Government's commitment to the legal protection of United Nations and associated personnel was reflected in the steps it was taking in order to be able to accede to the Convention on the Safety of United Nations and Associated Personnel.

17. **Mr. Dolatyar** (Islamic Republic of Iran) said that his delegation looked forward to the adoption of the draft resolution and of the draft optional protocol annexed thereto. It had joined the consensus on the text on the understanding that the element of "particular risks", to which reference was made in the third preambular paragraph of the draft optional protocol, was important and needed to be verified in each case. His Government believed that the declaration mentioned in article II, paragraph 3, of the optional protocol could be made by a host State at any time prior to the deployment of operations under article II (1) (b).

18. **Mr. Llewellyn** (United Kingdom), speaking on behalf of the European Union, said that, in the light of the opinions expressed by previous speakers, the European Union was considering whether to explain its position on the optional protocol during the relevant debate in a plenary meeting of the General Assembly.

19. *Draft resolution A/C.6/60/L.11 was adopted.*

20. **Ms. Ramos Rodríguez** (Cuba) noting that the inclusion of the term "peacebuilding" had made it possible to find a compromise formula which had permitted the adoption of the draft optional protocol by consensus, despite the fact that no widely accepted definition of the notion existed, contended that that term would not be applicable to pre-conflict situations. Furthermore, her Government would not apply the provisions of the optional protocol to operations for the purposes of delivering emergency humanitarian assistance (article II, paragraph 1 (b)), because United Nations and associated personnel were at no particular risk in such situations and therefore required no additional protection over and above that which they received under the national legislation of the country in question and the agreement with the United Nations on the deployment of the particular operation.

21. **Mr. Díaz Paniagua** (Costa Rica) said that his Government maintained the reservation it had formulated to the Convention on the Safety of United Nations and Associated Personnel to the effect that, in the event of a conflict between that convention and international humanitarian law, his country would give precedence to the latter. Both the Secretary-General of the United Nations and the International Committee of the Red Cross had acknowledged the possibility of such a conflict which could, unfortunately, whittle away the protection international humanitarian law afforded civilians and combatants in armed conflicts. The fourth preambular paragraph of the draft resolution was therefore welcome.

22. Since the draft optional protocol widened the scope of application of the Convention on the Safety of

United Nations and Associated Personnel, his delegation was obliged to extend the above-mentioned reservation to the new legal instrument. It likewise reserved the right to explain its position in greater detail when the draft resolution was debated in a plenary meeting of the General Assembly.

23. **Mr. Lavalle-Valdés** (Guatemala) said that the fact that his delegation had not commented on the interpretative declaration made by Venezuela did not necessarily signify agreement. If more time had been available to study that declaration, he might have taken issue with it, or formulated reservations to it.

24. **Ms. McIver** (New Zealand) said that, from the outset, her Government had been committed to enhancing protection for United Nations and associated personnel in the belief that all United Nations political, humanitarian and development assistance operations deserved the legal protection established in the Convention on the Safety of United Nations and Associated Personnel. Although her Government had made substantial concessions in order to reach consensus on the draft resolution, it was delighted that the Sixth Committee had been able to make a practical contribution to the safety of those working for the United Nations at the field level in dangerous conditions.

25. **Mr. Hmoud** (Jordan) welcomed the adoption of the draft resolution. He hoped that the optional protocol would prove to be an effective means of widening the legal protection of United Nations and associated personnel and would help to prevent acts of aggression against them. He said that interpretative declarations made by delegations must be in line with the provisions of the Vienna Convention on the Law of Treaties on the interpretation of treaties (even if those declarations were made by States which were not parties to the Convention), as the latter was considered to be part of customary international law.

Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session (*continued*) (A/C.6/60/L.14)

26. **Mr. Hmoud** (Jordan), introducing draft resolution A/C.6/60/L.14, said that it followed the pattern of previous years' resolutions on the same item. Since the Commission appreciated the views and information it received from Governments on the topics on its agenda, he particularly drew attention to paragraphs 3 and 4 on that subject. Several paragraphs dealt with the Commission's working methods. Others focusing on cooperation between the Commission and Governments in the codification and progressive development of international law emphasized the improved relationship between the Sixth Committee and the Commission and underscored how important it was for Governments to consult national organizations and individual experts before they formulated their comments on the Commission's draft texts. The draft resolution also referred to the usefulness of the International Law Seminar and appealed to States to make urgently needed voluntary contributions to the Trust Fund for the Seminar. He trusted that, as in previous years, the Committee would adopt the draft resolution on the International Law Commission's report without a vote.

27. *Draft resolution A/C.6/60/L.14 was adopted.*

The meeting rose at 1.15 p.m.